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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/809,268	03/16/2001	Jean-Louis H. Gucret	5725.0869-02	5334
22852 7590 10/30/2007 FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER PHILOGENE, PEDRO	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 10/30/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

09/809,268

**Applicant(s)**

GUERET, JEAN-LOUIS H.

**Examiner**

Pedro Philogene

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 23-222 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 29-32 and 39-42 is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☒ Claim(s) 70,106,107,109,116,152,153,155,162,204 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Continuation of Disposition of Claims: Claims rejected are 23-28,33-38,43-59,62,64-69,71-105,108,110-115,117-151,154,156-161,163-203 and 205-222.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23,25-28,33,35-38, 43-46,48-64,68,69,71,75-105,110,115,117,121-151,154,156,160,161,163-203,205-222 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abdo (5,671,497) in view of Dearling (3,008,169).

Abdo disclose a layered product applicator comprising an application portion (13) comprising a first flexible support (62) the application portion being configured to apply a cosmetic product; and a flexible elongated gripping portion comprising at least one layer of a flexible material (54) the second end of the flexible support, the flexibility of the material of the at least one layer being greater than the flexibility of the support (portion 62 can bend) the flexible material being impervious to the cosmetic product.

It is noted that Abdo did not teach of a flexible elongated gripping portion or handle comprising a second end of the flexible support; as claimed by applicant. However, in a similar art, Dearling evidences the use of a handle that is flexible throughout in order to evenly apply the cosmetic to the variously contoured areas of the body.

Therefore, given the teaching of Dearling, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of

Abdo, as taught by Dearling, by making the whole handle flexible in order to evenly apply the cosmetic to the variously contoured areas of the body.

With respect to the method claims, the method steps, as set forth, would have been inherently carried out in the operation of the device, as set forth above.

Claims 24,34,47,62,108,203 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abdo, (5,671,497) in view of Dearling (3,008,169) in view of Mas (5,016,659).

It is noted that the above combination of references did not teach of a flexible support that is a cardboard; as claimed by applicant however, in a similar art, Mas evidences the use of a handle that is Cardboard so that the applicator could be discarded after use.

Therefore, given the teaching of Mas, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Abdo, Dearlin; as taught by Mas so that the applicator could be discarded after use.

Claims 65-67,72-74,111-113,118-120, 157-159 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abdo (5,671,497) on view of Dearling (3,008,169) in view of Mas (5,016,659)

It is noted that the above combination of references discloses all the limitations; except for the different shapes and sizes of the gripping portion, and the different shapes and sizes of the flexible support and the length of the flexible material, as claimed by applicant. However, it would have been a matter of design choice to change the size and shape of the flexible support and flexible material, since such a

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modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). As to the shape of the gripping portion and the flexible support, these particular configurations are nothing more than one of numerous configuration one of ordinary skill in the art would have found obvious for the purpose of providing application surfaces in the flexible support and flexible material. In re Dailey, 149 USPQ 47 (CCPA 1976).

### ***Response to Amendment***

Applicant's arguments with respect to claims 23-222 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

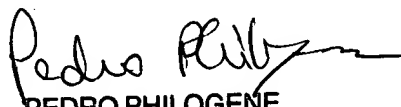
A shortened statutory period for reply to this action is set to expire THREE MONTHS from the mailing date of this action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pedro Philogene  
October 18, 2007

  
PEDRO PHILOGENE  
PRIMARY EXAMINER